Anthony Ratos s/o Domingos Ratos v City Specialist Centre Sdn Bhd (t/a City Medical Centre) (Attorney General, Intervener)

HIGH COURT (KUALA LUMPUR) — COMPANY WINDING UP NO D1–28–216–96
KL REKHRAJ JC
28 SEPTEMBER 1996

Civil Procedure *— Contempt of court — Sentence — Petitioner initiated committal proceedings against judicial commissioner who struck out his petition — Petitioner and lawyer were held in contempt of court for doing so — Contemners called upon to show cause as to why they should not be committed to prison for contempt — Contemners apologized and showed sincere repentance — Attorney General opined that custodial sentence unnecessary — What was the appropriate sentence*

Civil Procedure *— Jurisdiction — Contempt of court — Petitioner initiated committal proceedings against judicial commissioner who struck out his petition — Whether High Court that heard proceedings had jurisdiction to hold petitioner and his lawyer in contempt of court — Whether contempt was committed ex facie — Whether Attorney General should formulate a proper charge — Rules of the High Court 1980 O 52 r 1*

Major (R) MS Murthi ('Mr Murthi') and his client, Mr Anthony Ratos s/o Domingos Ratos ('Mr Anthony Ratos') were held in contempt of court on 9 August 1996 for initiating committal proceedings against RK Nathan JC who had given an order to strike out Mr Anthony Ratos's petition in the High Court. They were then called upon to show cause as to why they should not be committed to civil prison for contempt. Counsels for Mr Murthi and Mr Anthony Ratos pleaded for mercy for their clients and Mr Murthi submitted two affidavits to repent and apologize. Counsel for Mr Anthony Ratos, besides pleading for mercy for his client, took a point on jurisdiction in that the judge can only act on his own motion where the act of contempt was committed ex facie, ie contempt in the face of the court and that in this case, the judge had no jurisdiction to determine the matter summarily as it was the prerogative of the Attorney General to formulate a proper charge to commit his client on a strict proof basis as required to be beyond all reasonable doubt. The Attorney General intervened in these proceedings and was of the opinion that the court's power to imprison should be exercised sparingly and only in cases where the contemner had throughout the proceedings being unrepentant, and when other remedies are unavailable. It was pleaded that since both contemners had repented and apologized to the court at the earliest possible moment and had shown sincere regret and remorse, there was no necessity for a custodial sentence.

Held, imposing a fine on both contemners:

(1) These contempt proceedings arose out of the collateral contempt proceedings which were before this court in committing the

judicial commissioner for contempt and were therefore proceedings arising out of the same cause. Therefore, the act complained of was an act *in the face of the court record*. As such, the court has the powers under O 52 r 1 of the Rules of the High Court 1980 ('the RHC'). Contempt, whether in the face of the court (ex facie) or otherwise, was nonetheless a contempt which the court can punish on its own motion under O 52 r 1 of the RHC (see p 356E–I).

(2) The contempt by Mr Murthi and his client to cite a judicial commissioner was a deliberate and contumelious conduct sufficient to warrant a serious penalty of imprisonment to vindicate the court's dignity, to enforce obedience to its mandates, to protect its officers, and to shield the court from such scurrilous attacks, for without such deterrent punishment, the court would lose its public respect, and maintenance of law and order would be impossible (see p 357A–B).

(3) In view of the call of the Attorney General and the special circumstances shown, justice is now being tampered with mercy by this court and instead of sending them to prison, a fine of RM10,000 was imposed on each of the two contemners in default thereof, three months' imprisonment. However, this should not be a light of encouragement to other like-minded persons, as every act of contempt shall be treated seriously and punishment meted out dependent upon the facts of each case (see p 360B).

(4) The court would have imposed a custodial sentence but for the intervention of plea of the Attorney General. In the future, where the contempt is grave, custodial sentence wil be imposed and the court will not be moved by mitigating circumstances (see p 360E); *Leng San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor* [1990] 1 MLJ 273 followed.

[Bahasa Malaysia summary

Major (R) MS Murthi ('En Murthi') dan anak guamnya, En Anthony Ratos s/o Domingos Ratos ('En Anthony Ratos') telah diputuskan menghina mahkamah pada 9 Ogos 1996 kerana memulakan prosiding komital terhadap RK Nathan PK yang telah mengetepikan petisyen En Anthony Ratos di Mahkamah Tinggi. Mereka kemudiannya dipanggil untuk menunjuk sebab mengapa mereka tidak patut dihukum penjara sivil kerana menghina mahkamah. Peguam-peguam kepada En Murthi dan En Anthony Ratos memplid untuk belas kasihan bagi anak guam mereka dan En Murthi telah memfailkan dua afidavit untuk menyatakan penyesalan dan memohon maaf. Peguam kepada En Anthony Ratos, di samping memplid belas kasihan untuk anak guamnya, menimbulkan perkara bidang kuasa bahawa hakim hanya boleh bertindak atas usulnya sendiri di mana tindakan penghinaan telah dilakukan ex facie, iaitu penghinaan di hadapan

mahkamah; dan bahawa dalam kes ini, hakim tidak mempunyai bidang kuasa untuk menentukan perkara itu secara terus, kerana ia adalah prerogatif bagi Peguam Negara untuk membentuk tuduhan yang sewajarnya bagi menghukum anak guamnya atas bukti yang tegas seperti yang dikehendaki iaitu melampaui keraguan yang munasabah. Peguam Negara mencelah dalam prosiding ini dan berpendapat bahawa kuasa mahkamah memberikan hukuman penjara patut dilaksanakan secara berhati-hati dan hanya dalam kes-kes di mana penghina, di sepanjang prosiding, tidak menyesali perbuatannya, dan apabila tidak terdapat lain-lain remedi. Adalah diplid bahawa oleh kerana kedua-dua penghina telah menyesal dan memohon maaf kepada mahkamah secepat mungkin dan telah menunjukkan sesalan yang ikhlas, hukuman penjara adalah tidak perlu.

Diputuskan, mengenakan denda terhadap kedua-dua penghina mahkamah:

(1) Prosiding penghinaan ini berbangkit daripada prosiding penghinaan kolateral yang dibicarakan di hadapan mahkamah ini dalam prosiding komital terhadap pesuruhjaya kehakiman kerana penghinaan dan oleh itu adalah prosiding yang berbangkit daripada kausa yang sama. Oleh itu, tindakan yang dibuat aduan ialah tindakan *di hadapan rekod mahkamah.* Oleh itu, mahkamah mempunyai kuasa di bawah A 52 k 1 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'). Ianya adalah satu penghinaan sama ada dilakukan di hadapan mahkamah (ex-facie) atau tidak yang mana mahkamah boleh menghukum atas usulnya sendiri di bawah A 52 k 1 KMT (lihat ms 356E–I).

(2) Penghinaan yang dilakukan oleh En Murthi dan anak guamnya menyebut pesuruhjaya kehakiman adalah sengaja dan bersifat menghina. Perbuatan sedemikian patut dikenakan hukuman penjara untuk membuktikan kemuliaan mahkamah, menguatkuasakan kepatuhan kepada mandatnya dan melindungi pegawai-pegawainya, melindungi mahkamah daripada serangan mencabul, kerana tanpa hukuman mencegah, mahkamah akan kehilangan rasa hormat dari orang ramai, dan pemeliharaan undang-undang dan ketenteraman awam akan menjadi mustahil (lihat ms 357A–B).

(3) Memandangkan kepada pliding daripada Peguam Negara dan keistimewaan keadaan yang ditunjukkan, keadilan kini diubah dengan belas kasihan oleh mahkamah ini dan sebagai ganti kepada hukuman penjara, denda sebanyak RM10,000 dikenakan ke atas tiap-tiap penghina, jika gagal, tiga bulan penjara. Bagaimana pun, ini tidak boleh dijadikan sebagai dorongan kepada orang lain, kerana tiap-tiap tindakan penghinaan akan dikendalikan secara serius dan hukuman dikenakan bergantung kepada fakta setiap kes (lihat ms 360B).

(4) Mahkamah akan menjatuhkan hukuman penjara sekiranya tiada pencelahan rayuan daripada Peguam Negara. Pada masa hadapan, di mana penghinaan adalah serius, hukuman penjara akan dikenakan dan mahkamah tidak akan bertindak atas alasan keadaan-keadaan peringanan (lihat ms 360E).]

Notes

For cases on contempt of court, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 788–837.

For cases on jurisdiction, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2092–2255.

Cases referred to

Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application [1990] 1 MLJ 273

Legislation referred to

Rules of the High Court 1980 O 52 rr 1(3), (4), 4

Raja Aziz Addruse (*GK Ganesan* with him) (*Raja Aziz Addruse*) for the first contemner.

Kam Woon Wah (*Kam Woon Wah & Co*), *Balwant Singh Sidhu* (*Balwant Singh Sidhu & Co*) and *CH Liew* (*Elizabeth CH Liew*) for the second contemner.

Abdul Ghani Patail (*Vong Poh Fah* with him) (Attorney General's Chambers) for the Attorney General.

Tommy Thomas (the Malaysian Bar) for the Malaysian Bar and the Kuala Lumpur Bar.

KL Rekhraj JC: Following the powers vested in me by O 52 of the Rules of the High Court 1980 ('the RHC') r 1 (3) and (4), and r 4 thereof, and having held Major (R) MS Murthi ('Mr Murthi') and Mr Anthony Ratos s/o Domingos Ratos ('Mr Anthony Ratos') in contempt of court on 9 August 1996, I had called upon them to show cause as to why I should not commit them to civil prison for contempt; and upon hearing their counsels with their pleas in mitigation and the representatives from the Bar Council and the Kuala Lumpur Bar; and upon reading the two affidavits of Mr Murthi dated 19 August 1996 and 22 August 1996 — both filed in court — wherein Mr Murthi in the first affidavit dated 19 August 1996 on the show cause deposed:

Paragraph 3:

> Upon determining the facts, I consulted two counsels on the issue before me. The first is a leading Queen's Counsel from England. He is

A Mr Michael Parroy QC of No 3, Paper Building, Temple, London EC4Y 7EU.

Paragraph 4

The London QC's opinion was received by me on 28 June 1996 and 1 July 1996.

B Paragraph 5

I also consulted another leading counsel from India by the name of Mr KS Narayanan c/o No 28, Law Chambers, High Court Building, Madras 600 104. This counsel also gave legal opinion to me on the issues confronting the matters before this honourable court.

Paragraph 6

C I am unable to exhibit these opinions of the London QC and Indian counsel without my former client's (Mr Anthony Ratos) consent on account of s 126 of the Evidence Act 1950.

Paragraph 7

On 1 July 1996, the day before the contempt of court proceedings were D filed (to hold the judicial commissioner in contempt of court), I had a meeting with my then client (Mr Anthony Ratos) and reported to him all the findings of facts, the opinions of the London QC, Mr Michael Parroy, and the Indian counsel, Mr KS Narayanan. I also gave my views on the issues before the court and my legal advice.

Paragraph 8

E Having considered all these matters, my then client gave to me by way of a letter dated 1 July 1996 instructions to take all steps including contempt proceedings against the lawyers and the judge. I have this letter of instructions in my possession but am unable to produce this letter without my former client's consent on account of s 126 of the Evidence Act 1950.

F Paragraph 9

On 15 July 1996, for the first time I met the representative of the Attorney General who had made an application to intervene in these proceedings.

Paragraph 10

G In the discussions that followed and the exchange of views between me and the Attorney General's representative, it was shown to me that I was wrong and had been misdirected in law in making the application against the judicial commissioner. The ready acceptance of the view of the Attorney General will demonstrate my good faith.

H Paragraph 11

I readily consented to the intervener's application by the Attorney General even though no papers had been served on me at that time.

Paragraph 12

Thereafter, I had a series of discussions with my client and gave my I advice and took his instructions on the withdrawal of the application against the judicial commissioner.

Paragraph 13

On 16 July 1996, I was given instructions to withdraw the proceedings by my former client.

Paragraph 14

However, on 17 July 1996, I received instructions in writing from my client that he does not agree to the withdrawal of the committal proceedings against the judicial commissioner. I am unable to produce this letter of instruction without my former client's consent on account of s 126 of the Evidence Act 1950.

Paragraph 15

Subsequently, I had further meetings with my former client and he finally gave me instructions to withdraw the contempt proceedings against the judicial commissioner but to proceed with the solicitors, Datin Saraswathy Devi and Mr RS Sodhi.

Paragraph 16

Accordingly on 24 July 1996, I withdrew the application against the judicial commissioner in open court and explained that my client and I fell into an error and had misdirected ourselves in law and fact. I tendered our sincere and unreserved apology to the honourable court, the honourable judicial commissioner, his family and to the judiciary at large to purge the contempt.

Paragraph 20

I could not however convince my client to drop the proceedings against the two solicitors and decided that the best course open to me was to discharge myself. However my former client then engaged his present solicitors whereupon I was relieved of my charge.

Paragraph 26

It is only now that I have the benefit of his Lordship's statement of law on the scope of s 14 and total statutory immunity/protection of the law. I did not come across such a positive statement of law in my researches of the Malaysian cases. Even in the case of *Malaysian Bar v Tan Sri Dato Abdul Hamid bin Omar* [1989] 2 MLJ 281, which is a case on contempt of court, there is no reference to s 14 of the Court of Judicature Act 1964.

Paragraph 27

I crave leave of this honourable court to show that the Bar Council was held by the Supreme Court in the case of *Attorney General, Malaysia v Manjeet Singh Dhillon* [1991] 1 MLJ 167 to have relied wrongly on the English case when it proceeded to file contempt proceedings against the then Lord President Tun Abdul Hamid. The court held (at p 179): 'In my view, the real position is that the respondent had wrongly relied his belief in *Raymond v Honey* [1982] 1 ALL ER 756 to establish contempt in his proceedings against the Lord President by reason that as distinct from *Raymond v Honey*, the court of 2 July 1988 to which impede of access was alleged against the Lord President, was an unlawfully constituted court'. In giving my advice to my former client, I too had in good faith relied on the pari materia provisions of the Indian legislation and the decided cases therein.

Paragraph 28

I also crave leave to refer to my unreserved apology tendered to the court on 24 July 1996, and humbly wish to repeat the same at this juncture to demonstrate my repentance, remorse and contrition.

Paragraph 31

Wherefore, I pray that the aforesaid matter be considered as facts in showing cause on my behalf.

In the second affidavit dated 22 August 1996, called the Affidavit of Repentance, Mr Murthi deposed:

(1) I am the second contemner in these proceedings for contempt of court.

(2) I crave leave of the honourable court to place on record my plea in repentance and to plead that I am truly repentant and remorseful ,and once again tender my humble apology to this honourable court.

(3) I have, until the present set of related proceedings, had an unblemished record.

(4) I have realised my mistake and at the first opportunity applied to withdraw and advise the withdrawal of the impugned proceedings.

(5) I have suffered grievously by adverse publicity of these and related proceedings.

(6) I have already been sentenced in related contempt proceedings.

(7) I also beg to state that my advice to my former client was based on honest though retrospect mistake and ill-founded premises.

(8) I promise to be more careful in future and promise not to repeat these offences.

(9) My practice has been seriously affected as a result of this and related proceedings.

(10) I have learnt a bitter lesson and plead to this honourable court to extend its hand of mercy towards me and hereby retender my unreserved apology.

Datuk Kam Woon Wah and Mr Balwant Singh Sidhu, both appearing for Mr Murthi, put in a strong plea in mitigation:

Mr Murthi's whole professional career lies in ruins in the name of the family. The press media has accurately reported that this is the third contempt in three weeks. Mr Murthi has been found guilty of contempt arising out of only one case. Mr Murthi is not a party to a case but he is held in contempt of court as an advocate/solicitor for advising his former client to seek leave to cite the said Dato RK Nathan for contempt. His former client Mr Ratos has also been convicted. The dignity and respect of the court must be upheld by everyone. There should be no compromise on this issue. Anybody who undermines it or attempt to undermine it must be dealt with according to law. Mr Murthi before filing this application for leave to commit the judge had obtained an advice from the Queens Counsel from England named QC Michael Parroy, and also a leading Indian counsel named Mr KS Narayanan of Madras, India. In Your Lordship's judgment, *Karam Singh*'s case was referred to. He was a party to the case and was

asked by the Federal Court to apologize before sentencing. He refused and challenged the court and thus was sentenced to three months. A

The more recent case is of Mr Wee Choo Keong. As a member of the Bar, he was fined RM7,000.

Mr Murthi will have to 'kiss goodbye' to his professional career if the Bar Council or the Disciplinary Board takes action on any conviction by these courts. Mr Murthi is 'dead' professionally. If he is struck off, that would be the end of his career. There is no point to whip a 'dead horse'. I implore Your Lordship to treat this matter leniently. He genuinely regrets for his mistake and he sincerely repents. B

Mr Murthi has not stopped from apologizing as he has filed two affidavits in repentance. He has admitted to be in contempt and his apology is a very strong mitigating factor especially when it is given on the first available opportunity, and Mr Murthi is prepared to stand in court and personally apologize if need be. This shows remorse, contrition and deep regret, and he throws himself at the mercy of the court and pleads that he be given a non-custodial sentence. C

Raja Aziz Addruse, appearing on behalf of Mr Anthony Ratos, besides similarly pleading for mercy for his client, took a point on jurisdiction in that the judge can only act on his own motion where the act of contempt was committed ex-facie ie, contempt in the face of the court, and that in this case, the judge had no jurisdiction to determine the matter summarily as it was the prerogative of the Attorney General to formulate a proper charge to commit his client on a strict proof basis as required to be beyond all reasonable doubt. I had given serious thoughts on this submission and overruled it on the ground that these contempt proceedings arose out of the collateral contempt proceedings which were before this court in committing the judicial commissioner for contempt and are therefore proceedings arising out of the same cause. Therefore, the act complained of is an act *in the face of the court record.* As such, I have the powers under O 52 r 1 of the RHC which reads: D E F

(1) The power of the High Court to punish for contempt of Court may be exercised by an order of committal in Form 110.

(2) Where contempt of Court— G

(a) is committed in connection with—

(i) *any proceedings* before the High Court;

.....

(3) Where contempt of Court is committed in connection *with any proceedings* in the High Court, an *order of committal may be made by a Judge of the High Court.* H

O 52 r 4 reads as follows

Nothing in the foregoing provisions of this Order shall be taken as affecting *the power of the High Court* to make an *order of committal of its own motion against a person guilty of contempt of Court.* (Emphasis added.) I

I hold that contempt, whether in the face of the court (ex facie) or otherwise, is nonetheless a *contempt* which this court can punish on its own motion.

A This court had looked at this contempt by Mr Murthi and his client to cite a judicial commissioner as an act of deliberate and contumelious conduct sufficient to warrant a serious penalty of imprisonment to vindicate its own dignity, to enforce obedience to its mandates and to protect its officers and to shield those who are entrusted to its care from such B scurrilous attacks; for without such deterrent punishment or the protection of the law, the court of justice would sooner or later loose its hold of the public respect; and with it the maintenance of law and order would be rendered impossible.

A well publicized custodial sentence would keep ablaze the glory to C deter people like Mr Murthi and Mr Anthony Ratos — as a deterrent factor from rendering them contemptible in the eyes of the public. Mr Murthi truly living to his army discipline — a strategy in war — by taking *prior opinions* from learned QC, drew his 'sword' and charged himself into the arena of court to challenge the authority of the judge by taking the contempt proceedings against him to order to commit him to prison. His D drawn sword was met by a 'shield' — the provisions of s 14 of the Courts of Judicature Act — and the sword of punishment; and he now 'surrenders' to this court with an apology, asking for mercy that he and his then client were wrong and had misdirected themselves both in law and in fact and they now accept the error in which they fell into.

E Like in any lost war, Mr Murthi and Mr Anthony Ratos should have faced the consequences for the follies as 'prisoners', but for the special and strong pleas of the Attorney General, Malaysia — who had intervened in these proceedings — pleading that this court do restrain from dishing out a custodial sentence and instead thereto to show a very special quality of F mercy, and in response to that plea which is reproduced:

> The Attorney General intervened in these proceedings because an application was made by Mr Anthony Ratos for leave to commence committal proceedings against the judicial commissioner, Dato RK Nathan for giving an order to strike out the petitioner's (Mr Anthony Ratos) petition pending G before this court. In granting the order to strike out, the learned judicial commissioner was, we believe, acting in his judicial capacity. In filing this application to commence the committal proceedings, the petitioner had questioned the integrity of this court. It was on the account that public confidence in the judiciary should not be eroded by the filing of such an application that the Attorney General has intervened in this matter. We H believe that it is against public interest and also against the interest of judiciary for contempt proceedings to be initiated against the judges for carrying out their tasks in the performance of their constitutional duty. We would like the court's record to reflect our stand that no litigants or lawyers dissatisfied with any decision of His Majesty's court should resort to such acts of instituting contempt proceedings against the judge in having to I preside over the matter. Rightly or wrongly, the decisions of the judge still have the force of the law and ought to be respected. We believe that our legal system provides the aggrieved party a legal recourse and that we believe lies with an appellate court. It is truly unthinkable that the petitioner in this case should attempt to move this court to commit the learned judicial commissioner to prison for making an order in his judicial capacity. As Your

Lordship has quite rightly pointed out, such an act by itself is scandalous and contemptuous, which we believe this court would be entitled to act upon. We wish to put on record that we do not condone nor give countenance to such practice of resorting to contempt proceedings as a means of vindicating one's rights or claims. Such acts not only serve to intimidate the judges in their performance of their honourable duties, but also strike at the heart of the confidence of the judiciary.

What Mr Anthony Ratos did in this case was clearly wrong in law and neither was it acceptable in the eyes of the public policy. However, this court had found Mr Anthony Ratos did not act alone. He was ill-advised by his counsel, Mr Murthi. We believe Mr Murthi had made a grave mistake in his professional career when he advised his client to initiate these proceedings against the learned judicial commissioner. This court has found both the petitioner Mr Anthony Ratos and his counsel guilty of contempt. I do not intend to go into the question of jurisdiction of this court in the finding of guilty on the contempt. As far as that finding of guilty is concerned, this court is functus officio.

The appropriate question before this court at this stage would be: what is the appropriate sentence to be meted out? We were very distressed when we first had notice of this contempt proceedings. Had the contemners persisted with their application, there would be a strong likelihood that they would have faced the same fate as the late Mr Karam Singh, given the fact that these proceedings and the proceeding initiated by the late Mr Karam Singh are somewhat similar.

I have said earlier that the allegations made against the learned judicial commissioner in this case are serious and we certainly did not view it lightly. We take the stand that any person who perpetrates such acts should be punished with a sentence of a deterrent nature.

We ask this question whether both Mr Anthony Ratos and Mr Murthi should be given custodial sentence?

In spite of what I have said, *we feel that the answer to that question should be in the negative. There should be no custodial sentence*, as these are my instructions. By this plea of not asking for custodial sentence, we are not pleading for Mr Anthony Ratos or Mr Murthi. We say this in the interest of justice. On that account, we believe that there are certain facts that this court must appraise before proceeding to pass sentence. I like to refer to Mr Murthi's affidavit on the show cause — the first affidavit dated 19 August 1996, more particularly paras 9-12.

This affidavit is not specific in naming the persons who were involved in the discussion. We confirm of the event taking place as averred therein. Mr Murthi was in discussion with Dato Ghani and myself in the presence of Datin Saraswathy at Dato' Ghani's chambers at 3pm on 15 July 1996.

The reasons why we highlighted this event of the meeting at the Attorney General's Chambers shows the attitude of the contemners in these proceedings. The subject matter of that discussion was whether Mr Murthi and his client had acted rightly. We advised him that he was wrong in doing what he did. He (Mr Murthi) was graceful enough to admit his mistake, and agreed to withdraw the proceedings against the judicial commissioner; otherwise, if his advice was not accepted, Mr Murthi would discharge himself as counsel. Following that arrangement, both of them did withdraw the proceedings which were fixed for 24 July 1996.

A This goes to show that they have repented at the earliest possible moment upon our intervention. We hasten to add that Mr Murthi also heeded our advice as to the tenor of his client and his apology tendered to this court and as well as to the learned judicial commissioner and to the judiciary at large on 24 July 1996.

B We like to make these observations that Mr Murthi has been very co-operative in attoning for the wrong that he had committed against the judiciary and the learned judicial commissioner and in doing so, this undesirable and unpleasant episode was not prolonged unnecessarily as opposed to those cases that we have seen, as in the case of the late Mr Karam Singh as well as in the case of Mr Manjeet Singh. We do not have to endure adverse publicity in the press. Although the facts of this case are C somewhat similar to that of the late Karam Singh, we do not think that that case is an appropriate yardstick for this case. In *Karam Singh*'s case, the late Mr Karam Singh obstinately showed to persist with his application to commit three Supreme Court judges for contempt when they refused to allow him leave for extension of time to file his appeal record. At no time was there any apology given and no sign of remorse was shown by the late D Mr Karam right until the moment he was sentenced to imprisonment and served his sentence.

On the other hand, in this case Mr Murthi in all humility apologized to the court at the earliest possible moment. He has also given his reasons for the client's and his conduct in this case. His reasons, with respect, may not entirely absolve or exonerate him of the sin that he has committed here, but E we think his attitude and conduct subsequent to the filing of the application has shown sincere regrets and remorse for the damage he had inflicted upon the integrity and the dignity of His Majesty's court. The court's power to imprison should *be exercised sparingly* and only in cases where the contemner had throughout the proceedings being unrepentant. We also believe that this power to imprison should only be exercised when other remedies are F unavailable.

As Your Lordship has seen from the case quoted to the court, the *general trend is to impose fine only.*

My Lord, Mr Murthi has suffered the ignominy of being held guilty of contempt three times in as many weeks on a one single subject related on a G similar matter. He will be recorded as the first person from the Bar to have suffered such indignity. But what is most important is the fact that by now Mr Murthi would have learnt his lesson well in that he should never again scandalise the court. I am sure as from now as regard to his future professional conduct, he will stand guided by the things he has learnt from the events he had learnt from this case.

H Having appraised the entire facts of this case with utmost respect to the court, we believe that in this case *justice is served if it is tampered with mercy.* Both contemners had made a mistake. What is important is they have realised their mistakes and had done what was possible to rectify that mistake. On that score, we feel (ie the Attorney General feels) that there is no necessity for a custodial sentence.

I As other than that, how they are to be dealt with, we leave that to the discretion of this honourable court. As for fine, I like to confine cases where the contemners have scandalised the court in writing as in this case. The cases that come before me as a comparative figure is the case of: (i) Mr

> Arthur Lee where he was fined RM 5,000 in default three months; and (ii) Mr Manjeet Singh was fined RM5,000 in default three months. That's all as a guide on sentence.

In view of that call of the Attorney General and the special circumstances shown, justice is now being tampered with mercy by this court and I therefore, instead of sending them to prison, impose a fine of RM10,000 on each of the two contemners — Mr MS Murthi and Mr Anthony Ratos — in default thereof, three months imprisonment. Let not this be a light of encouragement to other like-minded persons, as every act of contempt shall be treated seriously and punishment meted out dependent upon the facts of each case.

The Supreme Court in *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v SM Idris & Anor and another application* [1990] 1 MLJ 273 had fined two members of the Bar RM5,000 each in default three months for making press releases commenting on the judgment of the Supreme Court, and there sounded the alarm at p 277:

> Finally we must say that *the court should seriously consider custodial sentences in such cases* and hereby warn that *in future* custodial sentences might be imposed. (Emphasis added.)

That future was today but for the intervention by the plea of the Attorney General. This court repeats that for the future, where the contempt is grave — as in this case — no fine will do, as the haughty and well to do contemners will scornfully throw their money in the face of the court and get away without the least degree of remorsefulness and compunction. Let the contemnors be warned that imprisonment shall be the order of that day. The courts will no longer be moved by mitigating circumstances.

Order accordingly.

Reported by Tey Tsun Hang